

**UNITED STATES DEPARTMENT OF COMMERCE****Patent and Trademark Office**

Address: COMMISSIONER OF PATENTS AND TRADEMARKS  
Washington, D.C. 20231

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
08/910,115	08/13/97	DAYEHAR	

IM71/0211

MORRIS EXAMINER

FAY SHARPE BEALL FAGAN  
MINNICH & MCKEE  
104 EAST HUME AVENUE  
ALEXANDRIA VA 22301

ART UNIT 1 PAPER NUMBER

02/11/99

DATE MAILED:

**Please find below and/or attached an Office communication concerning this application or proceeding.**

**Commissioner of Patents and Trademarks**

<b>Office Action Summary</b>	Application No. <b>08/910,115</b>	Applicant(s) <b>Baychar</b>
	Examiner <b>Terrel Morris</b>	Group Art Unit <b>1771</b>

Responsive to communication(s) filed on Aug 13, 1997

This action is **FINAL**.

Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 3 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

#### Disposition of Claims

Claim(s) 1-7 is/are pending in the application.  
 Of the above, claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

Claim(s) \_\_\_\_\_ is/are allowed.

Claim(s) 1-7 is/are rejected.

Claim(s) \_\_\_\_\_ is/are objected to.

Claims \_\_\_\_\_ are subject to restriction or election requirement.

#### Application Papers

See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.

The proposed drawing correction, filed on \_\_\_\_\_ is  approved  disapproved.

The specification is objected to by the Examiner.

The oath or declaration is objected to by the Examiner.

#### Priority under 35 U.S.C. § 119

Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

All  Some\*  None of the CERTIFIED copies of the priority documents have been  
 received.  
 received in Application No. (Series Code/Serial Number) \_\_\_\_\_.  
 received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\*Certified copies not received: \_\_\_\_\_.

Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

#### Attachment(s)

Notice of References Cited, PTO-892  
 Information Disclosure Statement(s), PTO-1449, Paper No(s). \_\_\_\_\_  
 Interview Summary, PTO-413  
 Notice of Draftsperson's Patent Drawing Review, PTO-948  
 Notice of Informal Patent Application, PTO-152

--- SEE OFFICE ACTION ON THE FOLLOWING PAGES ---

Art Unit: 1771

1. The oath or declaration is defective. A new oath or declaration in compliance with 37 CFR 1.67(a) identifying this application by application number and filing date is required. See MPEP §§ 602.01 and 602.02.

The oath or declaration is defective because:

It does not state that the person making the oath or declaration in a continuation-in-part application filed under the conditions specified in 35 U.S.C. 120 which discloses and claims subject matter in addition to that disclosed in the prior copending application, acknowledges the duty to disclose to the Office all information known to the person to be material to patentability as defined in 37 CFR 1.56 which occurred between the filing date of the prior application and the national or PCT international filing date of the continuation-in-part application.

2. The disclosure is objected to because of the following informalities: The first page of the specification should be amended to recite the relationship and status of the parent cases. There are many terms on pages 4-13 that appear to be trademarks. These have not be properly identified. In claims 5 and 6, “by” should be replaced with “with”.

Appropriate correction is required.

3. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

4. Claims 1-7 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. Claim 1 specifies an apparel worn by an individual. Individual cannot be claimed. It is recommended that Applicant insert “to be” before “worn”.

Art Unit: 1771

5. Claims 1-7 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicant regards as the invention.

In claim 1, the first layer is selected from a group, however, no group is set forth. Thus, the claim is incomplete and therefore indefinite. Also, the description of the fourth layer incurs the same problem.

In claim 4, it is unclear if the breathable membrane set forth is the same as that of the third layer or in addition thereto.

6. For the purpose of determining the scope of Applicant's invention and therefore interpreting the claimed invention, the specification must be relied on for a definition of inner moisture transfer materials and outer moisture transfer materials since those terms are not definite if not read in light of the definitions found in the specification. Therefore, Applicant's claims are limited to those inner moisture transfer materials set forth on pages 4-5 and those outer moisture transfer materials defined on pages 8-10.

7. The following references are cited of interest as being pertinent to the claimed invention:

US 5,253,434 to Curley, Jr. et al.  
US 5,216,825 to Brum  
US 4,910,886 to Sullivan et al.  
US 4,674,204 to Sullivan et al.  
US 4,216,177 to Otto  
US 4,529,641 to Holtrop et al.  
US 3,779,855 to Fonzi et al.  
US 3,607,593 to Semenzato

Art Unit: 1771

8. None of the cited prior art teaches the limited liner materials of the instant invention in combination with a foam and barrier membrane in the arrangement as claimed instantly.

9. Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Terrel Morris whose telephone number is (703) 308-2414. The Examiner can normally be reached Monday through Thursday from 7:00 am to 4:00 pm and on alternate Fridays.

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's supervisor, Mr. Marion McCamish, can be reached at (703) 308-3961.

The Office has established a Fax Center to handle Official communications from Applicants via facsimile. Two numbers have been provided: (703) 305-3599 for After Final communications and (703) 305-5408 for all other Official communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-0661.



Terrel Morris  
Primary Examiner  
Art Unit: 1771  
February 10, 1999